

ISSUES

The Administrative Law Judge granted claimant permanent partial disability benefits based upon a functional impairment of ten percent (10%). The claimant appeals that finding. The sole issue now before the Appeals Board is nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed.

Claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent on June 13, 1991, when he fell and struck his right jaw. Claimant obtained medical treatment which included three (3) surgical procedures. After recuperation, claimant returned to work for respondent at his usual occupation as an over-the-road truck driver.

Because of lack of agreement regarding the extent of functional impairment, the Administrative Law Judge appointed Edward L. Mosby, D.D.S., an oral surgeon, to evaluate claimant. The doctor examined claimant on May 25, 1994, and indicated claimant has a thirty-seven percent (37%) permanent impairment of function to the body as a whole as a result of his injury. The doctor indicated claimant has a twelve percent (12%) disability to the body for inability to chew a normal diet, fifteen percent (15%) impairment to the body for pain, and ten percent (10%) impairment to the body for degenerative joint disease at both temporal mandibular joints. Although Dr. Mosby was not deposed, the Administrative Law Judge considered his written report.

Respondent provided the testimony from Gary W. Hansen, D.D.S., one of claimant's treating oral surgeons. Dr. Hansen first saw claimant in November 1992 and followed him through October 1993. Dr. Hansen believes claimant has a five to ten percent (5-10%) permanent partial disability to the body as a whole as a result of his accidental injury. Although Dr. Hansen initially refused to rate the claimant, he did provide his opinion of impairment of function at his deposition.

Considering the record as a whole, the Administrative Law Judge found claimant's impairment of function to be ten percent (10%). The Appeals Board adopts that finding and conclusion as its own as it is within a reasonable range and appears reasonable in light of the evidence presented. The higher impairment of function rating provided by Dr. Mosby takes into consideration both temporal mandibular joints whereas the evidence indicates injury was limited to the right and the evidence fails to link any problems with the left temporal mandibular joint to the work-related injury. In addition, the impairment Dr. Mosby included for the inability to chew a normal diet and for pain seems somewhat high because claimant testified he was able to chew a normal diet and only somewhat limited in the size of bites he could chew. Although claimant did testify he experiences discomfort, it does not appear to justify the pain rating provided by Dr. Mosby. From all indications, claimant's discomfort is minimal and has not significantly impaired his physiological functioning. Therefore, the Appeals Board finds claimant has experienced a ten percent (10%) permanent partial impairment of function to the body as a whole as a result of the work-related injury of June 13, 1991.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer entered in this proceeding on November 29, 1994, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
J. Stephanie Warmund, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director